

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
CROCODILE BROADCASTING CORP.) Facility ID No.: 203215
Licensee of FM Translator Station W234DH,) NAL/Acct. No.: MB-202441410001
Baton Rouge (formerly Norco), LA) FRN: 0008354904
) File No. BLFT-20190830AAN
)

FORFEITURE ORDER

Adopted: January 3, 2024

Released: January 3, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order the Media Bureau (Bureau) issues a monetary forfeiture to Crocodile Broadcasting Corp. (CBC), licensee of FM translator station W234DH (Translator) and KGLA(AM), Baton Rouge (formerly Norco) Louisiana. We find that the CBC willfully violated three Commission rules (Rules): section 74.1251(b) by failing to file an application for authority to alter the Translator’s antenna system;1 section 74.1251(b)(2)2 by constructing and operating the Translator with an unauthorized antenna at an unauthorized height and with incorrect power; and section 1.17(a)(2)3 by certifying inaccurately, but without intent to deceive, that it had constructed the Translator as authorized. We establish a forfeiture in the amount of Twelve Thousand Five Hundred Dollars (\$12,500). We will, however, eliminate a reporting requirement originally proposed.

II. BACKGROUND

2. The matters at issue stem from CBC’s construction of a new FM translator in a manner other than authorized.4 CBC proposed to build the Translator with a directional antenna mounted at 150 meters above ground level5 and certified in a License Application that the directional antenna was properly oriented and the station was constructed as authorized.6 The Bureau thus licensed the facilities on September 20, 2019. A competing broadcaster sought reconsideration, alleging that CBC had

1 47 CFR § 74.1251(b).

2 Id. § 74.1251(b)(2).

3 Id. § 1.17(a)(2).

4 CBC applied for authority to construct the Translator in order to rebroadcast KGLA(AM) pursuant to the Commission’s AM Revitalization opportunities. See Application File No. BNPFT-20180409AAA (rec. Apr. 9, 2018). The Bureau granted a construction permit for the Translator on May 16, 2018, requiring completion by May 16, 2021. Application File No. BNPFT-20180409AAA (granted May 16, 2018) (Construction Permit).

5 The specified antenna was directional, manufactured by PSI, model FML-2(0.75)-DA. However, the constructed antenna was omnidirectional, model ERI LP-2E. See CBC Opposition to Petition for Reconsideration, Attach. A at 2 (rec. Oct. 25, 2019) (Opposition).

6 See Application File No. BLFT-20190830AAN, Section II, Certification, Section III, Quest. 4 (granted Sept. 20, 2019) (License Application).

substituted an omnidirectional antenna mounted approximately 5 meters lower than authorized.⁷ CBC also reduced power without authority, apparently to avoid interference.⁸ Antenna type, height, and power are important to achieve community coverage and to avoid interference to other stations. In opposing the reconsideration request, CBC acknowledged that it built and operated nonconforming facilities, explaining that the authorized directional antenna arrived damaged in August 2019 and that CBC was eager to commence operations while awaiting repair.⁹ The Translator's temporary operation with an omnidirectional antenna at a lower height and power continued for approximately two months until October 24, 2019.¹⁰

3. On July 31, 2023, the Bureau issued an Order and Notice of Apparent Liability for Forfeiture.¹¹ The Bureau accepted CBC's contention that the incorrect certification was without any intent to deceive the Commission,¹² noted that CBC had subsequently obtained approval to modify the facilities,¹³ and found that the Translator now operates with an authorized antenna, at an approved height and power, without any interference complaints.¹⁴ However, because CBC had operated for two months with an unauthorized antenna at the wrong height and power, failed to apply for authority to use that equipment, and incorrectly certified authorized construction, the Bureau found CBC apparently liable for a monetary forfeiture of twelve thousand five hundred dollars (\$12,500). The Bureau also proposed to establish reporting requirements out of concern for the accuracy of information CBC and its principals might supply in future applications.

4. CBC's response, filed on August 29, 2023, asks the Bureau to eliminate the reporting conditions and to cancel or reduce the forfeiture.¹⁵ CBC's arguments center around an assertion that CBC was unaware of the unauthorized construction and operation of the Translator until it received the R&I Petition because its consulting engineer never informed CBC that he had constructed nonconforming facilities. CBC contends that its violation was not willful, it reasonably believed its certification to be

⁷ Radio & Investments, Inc., Petition for Reconsideration (R&I Petition). The Bureau dismissed the R&I Petition because the broadcaster did not show that it could not have participated earlier. See 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1). Nevertheless, the Bureau considered on its own motion an appropriate response to CBC's admitted construction of facilities other than authorized.

⁸ The Translator's authorized effective radiated power (ERP) was 0.25 kW, but operated with an ERP of 0.01 kW when using the temporary antenna.

⁹ CBC, Opposition at 6-8, Attach A at 1-3.

¹⁰ *Id.*

¹¹ *Crocodile Broad Corp.*, Order and Notice of Apparent Liability for Forfeiture, DA 23-646 (rel. Jul. 31, 2023) (*NAL*).

¹² The Bureau noted, for example, that CBC would have no motive to deceive in order to prevent loss of the permit because over two years remained in which to construct, so CBC would have been in no danger of forfeiting the Construction Permit had it simply waited for the correct antenna to arrive. *NAL* at 4-5, citing *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994), and *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

¹³ See Application for Minor Modification, File No. 0000092898 (granted Jan. 24, 2020); Application for License to Cover, File No. 0000103923 (granted Feb. 10, 2020). The modified facilities, licensed to serve the community of Baton Rouge rather than Norco, use the authorized directional antenna mounted at 143 meters above ground level.

¹⁴ The License Application for the previously authorized facilities remained relevant because CBC obtained its current authorization as a modification of the license grant.

¹⁵ CBC, Request for Cancellation or Reduction of Proposed Forfeiture and Elimination of Reporting Requirement (rec. Aug. 29, 2023) (*Request*).

true, it quickly took corrective steps once it became aware of the problem, and that reporting conditions are unnecessary.¹⁶

III. DISCUSSION

5. Based on the wording of CBC's explanation in its Opposition, the Bureau believed that CBC was aware of the antenna substitution¹⁷ but used nonconforming facilities out of eagerness to begin broadcasting.¹⁸ The Bureau stated, for example, that CBC would have known at the time of application that it had not mounted the damaged directional antenna which it had returned to the manufacturer for repair and that CBC's certification to the truth of statements in the License Application,¹⁹ was therefore without a reasonable basis in violation of section 1.17(a)(2) of the Rules.²⁰ The Bureau also found that CBC negligently failed to communicate the antenna change to counsel and to review the application thoroughly before it was submitted to the Commission.

6. CBC now disputes that it had any knowledge of the nonconforming construction at the time of application. CBC contends that the engineering-specific certifications in the License Application were those of its engineering consultant, not of CBC.²¹ It further maintains that its own overall certification was truthful to the best of its knowledge and belief and that it had a reasonable basis to believe that the statements were correct because the outside engineer it hired to build the Translator assured CBC that he had completed construction pursuant to the Construction Permit.²² CBC says that it

¹⁶ CBC also argues that the Bureau has not provided adequate notice of its authority to impose reporting requirements. In view of our elimination of the reporting requirements, there is no need to address this argument. We briefly note, however, that CBC bases its concern on an incorrect premise that reporting requirements are "sanctions." See *Request* at 8, citing *CBS Corp. v. FCC*, 663 F.3d 122, 130 (3rd Cir. 2011). Reporting requirements are not sanctions but, rather, a requirement to provide additional information in future applications thereby alerting the Commission of potentially relevant history. The Bureau's authority to request such information is established in the Rules. See 47 CFR §§ 73.1015, 73.3514(b), and 73.3566(b).

¹⁷ See, e.g., *Opposition* at 6-7 (footnotes omitted) ("Crocodile Broadcasting discovered that the antenna was damaged The antenna was then returned to its manufacturer for repairs. While W234DH's authorized antenna was being repaired, Crocodile Broadcasting determined that it could temporarily commence on-air operations by sharing another antenna located at W234DH's transmitter site. . . . Crocodile Broadcasting mistakenly overlooked the fact that although W234DH was now operational, it was not operating with the facilities authorized in its Construction Permit.").

¹⁸ See *NAL* at 5.

¹⁹ *Id.* The standard licensee certification reads, in relevant part, "I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations." FCC Form 350, Certification, Section II. CBC's President signed this certification in the License Application.

²⁰ Section 1.17(a)(2), which governs submission of incorrect information without deceptive intent, focuses on whether the licensee or applicant had a reasonable basis for believing that a false material factual statement or omission was correct and not misleading. See 47 CFR § 1.17(a)(2) (no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."). Even absent an intent to deceive, a false statement may constitute an actionable violation of section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.

²¹ *Request* at 4.

²² *Id.* at 2, 5.

had no reason to question the engineer because he was reputable in the industry²³ and had proven himself accurate and trustworthy in previous work for CBC. CBC did not present this argument at earlier stages of this proceeding but now characterizes its prior explanations as describing only what the engineer, not CBC, knew²⁴ at the time of application. CBC says that it did not learn of these matters until it received the R&I Petition after license grant.²⁵ CBC further argues that because it was unaware of the engineer's actions, it could not have willfully violated section 74.1251(b)(2)²⁶ by constructing the omnidirectional antenna or section 74.1251(b) by failing to seek modification of facilities that it did not know needed to be modified.²⁷ CBC, therefore, argues that the Bureau mischaracterized its actions as "gross negligence."²⁸

7. We reject CBC's argument that its violations were not "willful." A "willful" violation under section 503(b) of the Act means "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²⁹ Here, CBC willfully operated the Translator which its consulting engineer had built using an incorrect antenna, height, and power, even if, as CBC asserts, it was unaware that the facilities were unauthorized.³⁰ Nor do we accept CBC's contention that the engineer's actions should not be imputed to CBC. CBC's argument relies upon one sentence within *dicta* of a case decided more than 50 years ago.³¹ CBC misinterprets that language as exempting licensees from liability if they investigate contractor qualifications prior to hiring and act quickly to correct any contractor mistakes. This is not so. Long-standing Commission precedent, more recent and more pertinent than the single case upon which CBC relies, holds licensees responsible for unintentional rule

²³ For example, CBC states that the engineer was a Certified Professional Broadcast Engineer, Certified Broadcast Networking Technologist, and had served as the Louisiana Certification Chairman for the Society of Broadcast Engineers. *Id.* at 4.

²⁴ Specifically, CBC maintains that its Opposition was "phrased such that knowledge and unilateral acts of an Outside Consulting Engineer are difficult to discern from those of CBC. At the time of the license application CBC lacked knowledge that construction remained incomplete. Only subsequently did CBC learn that the independent contractor was aware of that information at the time of application." *Id.*

²⁵ *Id.* at 4, n. 21.

²⁶ *Id.*

²⁷ 47 CFR § 74.1251(b).

²⁸ *Request* at 6.

²⁹ See 47 U.S.C. § 312(f)(1); *KOFI, Inc.*, Forfeiture Order, 20 FCC Rcd 17886, 17888 (EB 2005), citing *Southern Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991); *Radio Power Corp.*, Forfeiture Order, 21 FCC Rcd 6940, 6940 (EB 2006) (violation was willful despite misunderstanding between licensee and its engineering consultant concerning need to file an application).

³⁰ Moreover, we note that some aspects of the nonconforming construction may have been visually discernable had CBC verified the work completed. Most (though not all) directional antennas have more elements than omnidirectional antennas and appear visually more complex. The R&I Petition identified the constructed antenna as nonconforming based on its lack of parasitic elements that are generally present on directional antennas, and the different antenna shape from the model proposed. See R&I Petition at 4. Regarding the ERP, the power at which a station is operating should be readable on a meter in the transmitter building, or in many cases remotely at studio or a remote control site.

³¹ *Request* at 6, citing *Crowell-Collier Broad. Corp.*, Letter Order, 14 FCC 2d 358, 359 (1966) (*Crowell*). There, the Commission faulted a licensee for not investigating allegations that its employees were engaging in payola and stated that "[t]he only way a licensee can avoid imputation of knowledge of improper conduct on the part of its employees is to investigate fully all reports or other indications of misconduct." *Crowell*, 14 FCC 2d at 359. CBC argues that it investigated its engineer's qualifications prior to construction, and CBC promptly investigated upon later receipt of the R&I Petition. *Request* at 6. It also claims to have taken quick action once it learned of the problem, such as requesting special temporary and applying to modify its facilities.

violations resulting from erroneous information from an engineer.³² Even if we accept *arguendo* that CBC's consulting engineer was highly regarded, was never before inaccurate, and uncharacteristically failed to share material information with CBC, the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors"³³ The Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."³⁴ Nothing in the record suggests that this precedent does not apply to the current circumstances. Further, with respect to CBC's corrective actions, the Commission expects that all licensees will quickly remedy any discovered violations. We do not, as CBC suggests, view its correction of the violations as a mitigating factor. The Commission has long held that a licensee's remedial steps in response to an enforcement action are not a reason to reduce a forfeiture.³⁵ To the extent that CBC disputes the Bureau's characterization of CBC's actions as "gross negligence," we note that this language simply mirrored CBC's own description of the circumstances.³⁶

8. We do, however, accept CBC's contention that the circumstances as it now describes them would not raise the same level of concern about the accuracy of CBC's future applications. If the circumstances are as CBC presents, its failures lie primarily in reliance upon a contractor without verification and not upon an overarching propensity for carelessness in preparing and reviewing applications. Based on the updated record, we do not believe that CBC would be likely to submit inaccurate information to the Commission again and, therefore, we will not adopt the reporting requirements originally proposed.

IV. CONCLUSION

9. Based on the record before us and in light of the applicable statutory factors, we conclude that CBC willfully violated sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Rules by failing to file an application for authority to alter the Translator's antenna system; by constructing and operating the Translator with a nonconforming antenna mounted at an unauthorized height and using unauthorized power; and by certifying inaccurately, but without intent to deceive, that it had constructed the Translator as authorized. For the reasons discussed in the *NAL*, we find CBC liable for a forfeiture. We decline to cancel or reduce the \$12,500 forfeiture proposed in the *NAL*. We do, however eliminate the proposed reporting requirements.

³² See, e.g., *Air-Tel, LLC*, Forfeiture Order, 36 FCC Rcd 8867, 8874, para. 17 (2021) (licensee responsible for violations when its engineer mistakenly but unlawfully programmed equipment to operate outside the scope of the licensee's authorization); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (company's reliance on an independent contractor to construct a tower in compliance with FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broad. Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (licensee responsible for violations despite its reliance on a consulting engineer).

³³ *Eure Family L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002).

³⁴ *American Paging, Inc. of VA*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420 para. 11 (WTB 1997) (quoting *Triad Broad. Co., Inc.*, 96 FCC 2d 1235, 1244 (1984)).

³⁵ See, e.g., *Dialing Services, LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6204, para. 32 (2017). See also *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875, para. 26 (2002) ("All licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention").

³⁶ See Opposition at 6 ("the error was the result of a gross oversight by Crocodile"), 8 ("The filing was an oversight resulting from Crocodile Broadcasting's gross negligence pure and simple.").

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,³⁷ and section 1.80 of the Commission's rules,³⁸ Crocodile Broadcasting Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) for willfully violating sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Commission's rules.³⁹

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules,⁴⁷ CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. In order for CBC to pay the forfeiture, it shall notify Irene Bleiweiss at Irene.Bleiweiss@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. CBC shall also send electronic notification of payment to Irene Bleiweiss, Media Bureau, Federal Communications Commission, at Irene.Bleiweiss@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to 47 U.S.C. § 504(a).

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),⁴⁰ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:⁴¹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁴² For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.

³⁷ 47 U.S.C. § 503(b).

³⁸ 47 CFR § 1.80.

³⁹ See 47 CFR. §§ 74.1251(b), 74.1251(b)(2), 1.17(a)(2).

⁴⁰ Payments made using CORES do not require the submission of an FCC Form 159.

⁴¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁴² Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. with the first four digits, denoting the year, excluded (e.g., NAL 202412345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. Requests for full payment of the forfeiture proposed in this Forfeiture Order under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.⁴³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy must be emailed to Alexander Sanjenis (alexander.sanjenis@fcc.gov) and Olivia Hill (olivia.hill@fcc.gov).

15. **IT IS FURTHER ORDERED**, that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ernesto Alejandro Schweikert, Vice President, Crocodile Broadcasting Corp., 3540 South I-10 Service Rd. West, Metairie, LA 70001 and by electronic mail to alejandro@kgla.tv. A copy shall also be sent to the station’s representative, Francisco Montero, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th St., Arlington, VA 22209 and by electronic mail to montero@fhhlaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴³ See 47 CFR § 1.1914.